

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

(Terra Bella, CA)

DOLE CITRUS, d/b/a CENTRAL  
VALLEY CITRUS

Employer<sup>1</sup>

and

Case 32-RC-4779

UNITED FARM WORKERS OF  
AMERICA, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a California corporation engaged in the operation of a citrus packing facility in Terra Bella, California. During the past twelve month period, the Employer sold and shipped citrus valued in excess of \$50,000 to customers located outside the State of California. On the basis of the above, I find that the Employer is engaged in commerce within the meaning of the Act and that its operations meet the Board's standard for non-retail operations. Accordingly, the assertion of jurisdiction over the Employer is appropriate herein <sup>2</sup>

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<sup>1</sup> The name of the Employer appears as stipulated to by the parties at the hearing.

<sup>2</sup> The briefs filed by the parties have been duly considered.

3. The Employer contends that the Petitioner, United Farm Workers of America, AFL-CIO, hereinafter referred to as the Union, is not a labor organization within the meaning of Section 2(5) of the Act. This assertion is apparently based upon the fact that the Union has historically sought to represent only agricultural laborers who are excluded from coverage under the Act. Further, it is argued by the Employer that the Union has taken the position over the years that it was not a labor organization under the Act. For the reasons set forth below I find that the Employer's position is totally without merit and I conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I shall direct an election herein.

According to the testimony of Guadalupe Martinez, National Vice President and Organizing Director of the Union, the petition herein is the first petition filed by the Union with the National Labor Relations Board. Since its inception about 30 years ago, the trade jurisdiction of the Union, as set forth in its Constitution<sup>3</sup>, was limited to agricultural laborers. However, at the 1994 convention the trade jurisdiction of the Union was changed to read agricultural and related laborers. Mr. Martinez testified that what this meant is that in terms of organizing the Union was going to follow its "constituency", that is farmworkers, as they took jobs in non-farm industries, including packing sheds, slaughterhouses, and other industries. The Union, according to Martinez, is actively engaged in organizing campaigns at several other non-farm employers.

There is no issue that the workers involved herein are employees within the meaning of Section 2(3) of the Act. It follows, therefore, that since the Union is seeking to represent such employees it is a labor organization within the meaning of Section 2(5) of the Act even if this is the Union's first attempt to organize non-agricultural laborers. *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970). See also, *Early California Industries*, 195 NLRB 671, 674 (1972). At the hearing the Employer attempted to litigate the procedure under which the Union's constitution was amended to broaden its trade jurisdiction. It is well established, however, that it is the willingness of an organization to represent employees which is controlling, not the organization's constitutional jurisdiction. *NAPA New York Warehouse*, 75 NLRB 1269 (1948); *"M" System*, 115 NLRB 1316, fn. 2 (1956), and *Community Service Publishing*, 216 NLRB 997 (1975). Thus, even assuming, which is not the case here, that the Constitution barred the representation of statutory employees the Board is not precluded from

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<sup>3</sup> Pursuant to arrangements made by the parties at the hearing, a copy of the entire Constitution was submitted by the Union after the close of the hearing. It is hereby received into evidence as a late filed exhibit.

processing the petition and, if it wins the election, the Union is not precluded from representing the employees. *Hazelton Laboratories*, 136 NLRB 1609 (1962); *Big "N" Department Store No. 307*, 200 NLRB 935, fn. 3 (1972).

The Employer also asserts that the Union is disqualified from representing the employees herein because it may have as associate members individuals who might be supervisors within the meaning of the Act. In order to establish this claim, the Employer would have to show that its statutory supervisors are members of the Union. See, *Sidney Farber Cancer Institute*, 247 NLRB 1 (1980) where the Board made clear that disqualification is based upon the role played by the employer's supervisors in the petitioning organization. There is absolutely no evidence, nor even a claim, that any of the Employer's supervisors are members of the Union. The associate members referred to in the transcript are called "Contributing Members" in the Union's Constitution. Article 10, Section c classifies Contributing Members as any person who makes a monthly contribution to the Union in a designated amount and requests such form of membership. Section d of Article 10 states that contributing members have an honored place within the Union because of their assistance. The section goes on to state, however, that all other provisions of the Constitution are inapplicable to Contributing Members. Article 11, Disqualification From Joining the Union, states, in pertinent part, that "No person acting on behalf of any employer or having the right to hire and/or fire shall be eligible for membership in this Union ...". Copies of Articles 10 and 11 of the Union's Constitution are attached hereto as Appendices A and B. It is clear from the above that while the Union solicits financial assistance from supporters and honors them with a form of membership, such Contributing Members, in addition to not having the right to vote on officers, play absolutely no role in the operation of the Union. The situation at hand is totally unlike those cases cited by the Employer in which the Board disqualified the petitioning organization because of the involvement of the employer's supervisors in the day to day affairs of the Union. As for any refusal on the part of the Union to provide testimony or records pursuant to the Employer's subpoenas, the short answer is that what the Employer was seeking is totally irrelevant to the issues in this matter. The Union formerly restricted its organizing efforts to agricultural laborers exempted from the Act. It now seeks to represent employees covered by the Act. Under Board law as discussed above the Union is a statutory labor organization and is not in any way disqualified from seeking to represent the employees involved herein.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. At the hearing the parties stipulated, and I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All packers, graders, general floor employees, receiving employees, mechanics, forklift operators, baggers, sealers, and pallet taggers employed by the Employer at its Terra Bella, California, facility: excluding all other employees, office clerical employees, professional employees, persons employed through temporary employment agencies, leads, guards, and supervisors as defined in the Act.

#### DIRECTION OF ELECTION<sup>4</sup>

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>5</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by **UNITED FARM WORKERS OF AMERICA, AFL-CIO.**

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<sup>4</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

<sup>5</sup> At the time of the hearing the Employer's facility was closed for repairs and was not scheduled to reopen until sometime in August, 2000. However, once the plant reopens it will be at full staff within one or two days of operation. Accordingly, the timing of the Notice of Election will take into account the date on which the plant reopens and when full staffing is achieved.

## LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of Notice of Election to be issued subsequently, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, within seven (7) days of the issuance of the Notice of Election. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 16, 2000.

Dated at Oakland, California this 2nd day of August, 2000.

/s/ James S. Scott

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James S. Scott  
Regional Director  
Region 32  
32-1199

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